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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1260

WYETH-SCOTT COMPANY, an Ohio Corporation,
Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, Respondent,

DOROTHY MAE DRIGGERS,

MARILYN KAY DRIGGERS, and KAREN LEE DRIGGERS, Minors,
by DOROTHY MAE DRIGGERS, their Guardian *ad Litem;*

DOROTHY MAE DRIGGERS, Administratrix of the
Estate of Oscar Driggers, Jr., Deceased;

B & B SUPPLY COMPANY, a California Corporation,
Parties in Interest

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT**

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## OPINIONS BELOW

No opinion has been delivered in any of the three courts below.

## GROUNDS FOR INVOKING JURISDICTION OF THIS COURT

Petitioner is one of 31 defendants in an action for damages for wrongful death filed in the Superior Court of the State of California for the County of Los Angeles. Petitioner moved in the trial court, the Superior Court, to quash service of summons on it as to the complaint of the plaintiffs and as to the cross-complaint of a co-defendant on the ground that Petitioner was a foreign corporation not doing business in the State of California, and, therefore, the Superior Court had no jurisdiction over the person of Petitioner. This motion was denied by the Superior Court on January 23, 1968. Pursuant to California procedure, Petitioner filed its petition in the Court of Appeal of the State of California, Second Appellate District, for a writ of mandate to compel the trial court to quash the services, but this petition was denied, without opinion, on February 20, 1968. This is the ruling of which Petitioner seeks review in this Court. Petitioner did file on March 1, 1968, a petition for hearing on the matter in the Supreme Court of California. Said petition for hearing was denied, without opinion, on the same day, March 1, 1968. Petitioner can have no further review of this matter in the California courts.

On March 4, 1968, the trial court signed an order extending the time within which Petitioner must plead to the merits until March 25, 1968. Petitioner sought additional time to permit it to seek relief in this Court by filing a motion in the trial court requesting a further extension of time for pleading to the merits. Said motion was heard and denied, without opinion, by the Superior Court on Tuesday, March 19, 1968. In order to forestall the entry of a default against Petitioner while, in pursuit of its lawful remedies, it seeks relief in the Supreme Court of the United States, Petitioner is preparing to plead to the merits of the claims against it in the Superior Court, appearing specially and under protest, and reserving all of its rights.

Jurisdiction to review the ruling of the Court of Appeals of the State of California, Second Appellate District, is conferred on the Supreme Court of the United States by the provisions of Section 1257(3), United States Code.

## QUESTION PRESENTED

Whether Petitioner, an Ohio corporation, has been denied due process of law by the courts of the State of California in violation of the rights guaranteed to Petitioner by the 14th Amendment to the Constitution of the United States by holding that the Superior Court of the State of California for the County of Los Angeles has jurisdiction over the person of Petitioner, an Ohio corporation not doing business in California, in a Civil Action brought in said Superior Court by the survivors of a decedent seeking damages from the Petitioner and 29 other defendants for the alleged wrongful death of said decedent, when it is established on the record that Petitioner is an Ohio corporation, not registered or qualified to do business in California, and that Petitioner had no office or place of business or agents or employees in California, and that Petitioner owned no stock in trade or other property, real or personal, in California and that the contacts which Petitioner had with California upon which *in personam* jurisdiction is allegedly based consist solely in Petitioner's having sold to a California corporation, also a defendant in the action, a number of articles manufactured by Petitioner in Ohio and sold and delivered by Petitioner to said California corporation in Ohio, one of which devices was thereafter allegedly re-sold to decedent's employer and allegedly caused decedent's death.

## CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment XIV, Sec. 1, Constitution of the United States

> "* * * [N]or shall any state deprive any person of life, liberty, or property, without due process of law; * * *"

California Code of Civil Procedure, Sec. 411. Summons; method of service.

> "* * *
>
> "2. Foreign corporations; * * *
>
> "2. If the suit is against a foreign corporation, or a nonresident joint stock company or association, doing business in this state: in the manner provided by Sections 6500 to 6504, inclusive of the Corporations Code." West's Annotated California Codes, vol. 14, 1967 Cum. Pocket Part, p. 77.

California Corporation Code, Sec. 6501. Service on secretary of state; court order; number of copies of process and order.

> "* * * [I]f no agent has been designated and if no one of the officers or agents of the corporation specified in Section 6500 can be found after diligent search and it is so shown by affidavit to the satisfaction of the court or judge, then the court or judge may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy secretary of state of two copies of the process together with two copies of the order, except that if the corporation to be served has not filed the statement required to be filed by Section 6403 then only one copy of the process and order need be delivered but the order shall include and set forth an address to which such process shall be sent by the Secretary of State." West's Annotated California Codes, vol. 24, p. 647.

California Code of Civil Procedure, Sec. 416. Jurisdiction of parties; time of acquisition. * * *

> "From the time of the service of the summons and of a copy of the complaint in a civil action, or of the

completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. * * * The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him." West's Annotated California Codes, vol. 14, p. 414.

California Code of Civil Procedure, Sec. 416.1. Notice of motion to quash service of summons for lack of jurisdiction; * * *

"Any defendant or cross-defendant upon whom service of summons has been made may serve and file, on or before the last day on which he is required to plead, or within such further time as the court may for good cause allow, a notice of motion to quash the service of summons, upon the ground of lack of jurisdiction of the court over him. * * *" West's Annotated California Codes, vol. 14, 1967 Cum. Pocket Part, p. 89.

California Code of Civil Procedure, Sec. 416.3. Mandamus to compel quashing of service of summons.

"If a motion of a defendant or cross-defendant to quash service of summons, as provided in Section 416.1 of this code, is denied by the court, he may, before pleading, and within 10 days after service upon him of written notice of the order of the court denying the motion, or within such additional time not exceeding 20 days as the court may allow, petition an appropriate appellate court for a writ of mandate directed to the court wherein the action or proceeding is pending requiring the entry of its order quashing the service of summons. * * *" West's Annotated California Codes, vol. 14, 1967 Cum. Pocket Part. p. 91.

California Code of Civil Procedure, Sec. 1014. Appearance defined; * * *

"A defendant appears in an action when he answers, demurs, files a notice of motion to strike, or gives

the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. * * *" West's Annotated California Codes, vol. 18, 1967 Cum. Pocket Part, p. 116.

California Rules of Court, Appellate Rules, Rule 24. Decisions of Reviewing Court.

"(a) When decisions become final. * * * A decision of a Court of Appeal becomes final as to that court 30 days after filing. * * * When a decision of a Court of Appeal is final as to said court, it is not thereafter subject to modification or rehearing by said court. * * *" West's Annotated California Codes, vol. 23 Pt. 1, p. 305, as amended eff. Nov. 11, 1966.

## STATEMENT OF THE CASE

On February 14, 1967, Dorothy Mae Driggers, in her own right and as Guardian ad litem of her two minor daughters and as Administratrix of the estate of Oscar Driggers, Jr., deceased, filed suit in the Superior Court of the State of California for damages for the allegedly wrongful death of Oscar Driggers, Jr., Deceased. Thirty-one persons were named as defendants, one of whom is Jack Ray Driggers, son of decedent, who is alleged to be unwilling to join the plaintiffs in the suit. Petitioner and the remaining twenty-nine defendants are alleged to be liable on various grounds of negligence and breaches of warranty for wrongfully causing the death of decedent. With respect to Petitioner, the complaint alleges that Petitioner manufactured and sold a certain device which, while it was being used on an artificial oil drilling island in tideland waters near the city of Long Beach, California, on April 21, 1966, failed to function properly thus causing decedent to sustain bodily injuries which resulted in his death. One of the other defendants in this suit is B & B Supply Company, a California Corporation, which, the complaint alleges, pur chased the offending device from Petitioner and sold it to decedent's employer, defendant Guy F. Atkinson Company.

Not finding Petitioner within the State of California, Plaintiffs caused service to be made on Petitioner by serving the Secretary of State of California pursuant to California Code of Civil Procedure, Section 6501. Defendant B & B Supply Company filed a cross-complaint in the action against this Petitioner and, not finding Petitioner in the state, caused process to be served on Petitioner in the same manner.

Petitioner, appearing specially, moved in the Superior Court to quash both of these attempted services. Uncontroverted facts established by affidavits in the Superior Court show that Petitioner is an Ohio Corporation with its principal place of business in Newark, Ohio; Petitioner has never applied for a permit to do business in the State of California and has never qualified as a foreign corporation in California; Petitioner has never hired, maintained, or paid any salesman, sales representative or solicitor in California; Petitioner has never designated anyone as its agent for service of process in California; Petitioner has no stock in trade or any other property, real or personal, in California; Petitioner has never had an office or warehouse in California; Petitioner has no license or franchise agreement with anyone in California; Petitioner has never maintained a bank account or savings account in California; cross-claimant B & B Supply Company, is a California corporation doing business in California and is not controlled by or in any manner related to Petitioner other than as a buyer of Petitioner's products and Petitioner has no financial interest in B & B Supply Company.

The affidavits further establish that articles manufactured by Petitioner in the State of Ohio are sold by Petitioner in Ohio to cross-claimant B & B Supply Company and to other wholly independent concerns located in the State of California, who then sell said articles to other persons unknown to Petitioner; all articles manufactured by Petitioner in Ohio are shipped to B & B Supply Company and other retailers located in California "Free on Board, Newark, Ohio"; B & B Supply Company and other retailers of Petitioner's products purchase these articles from Petitioner on a cash basis; there

is no consignment shipping by Petitioner nor any similar type of arrangement whereby Petitioner retains ownership of its products after they leave Newark, Ohio, or pending their resale by those who buy them from Petitioner.

The affidavits further establish that of Petitioner's total gross sales of $259,040.03 in 1965, the gross sales to purchasers located in California totaled $13,156.63, and of Petitioner's total gross sales of $261,002.63 in 1966, the gross sales to purchasers located in California totaled $5,832.33.

The Superior Court, after hearing argument, denied the motion without opinion on January 23, 1968. Petitioner sought review of this ruling by filing a petition for a writ of mandamus with the California Court of Appeal, Second Appellate District, pursuant to the provisions of Section 416.3, California Code of Civil Procedure, to compel the lower court to quash service of the two summonses. The Court of Appeal denied this petition without opinion on February 20, 1968. Petitioner thereupon filed a Petition for Hearing in the Supreme Court of the State of California, said petition being in the nature of a petition for writ of certiorari to this Court. The California Supreme Court denied the petition, thus refusing to review the matter, without comment or opinion on the same day, March 1, 1968. Petitioner can have no further review of the question in the California courts. California Appellate Rules, Rule 24.

The applicability of the "due process clause" of the 14th Amendment and of pertinent decisions of the Supreme Court Court of the United States was presented to the trial court in the written memoranda filed and in oral argument, as appears from the oppositions to Petitioner's motion to quash filed in the trial court by plaintiffs (App. 1) and by B & B Supply Company (App. 2). The issue was presented to the Court of Appeal as appears from Petitioner's Memorandum of Points and Authorities (App. 3 & 4), B & B Supply Company's Reply to Petition (App. 6), and plaintiff's Answer to Petition (App. 5). Petitioner also presented this issue in its Petition for Hearing filed in the Supreme Court of California (App. 6).

Petitioner has exhausted the appeals available to it in the California Courts. Section 416.3, Code of Civil Procedure, provides that review of a trial court's denial of a motion to quash is by way of a petition to the Court of Appeals for a writ of mandamus. Rule 24 of the California Appellate Rules provides that, once the decision of the Court of Appeals becomes final (30 days after it is filed), the decision is not thereafter subject to modification or rehearing by the Court of Appeal.

## ARGUMENT FOR ALLOWANCE OF THE WRIT

### I

This Court should allow the writ of certiorari because the California Courts have decided a Federal question of substance probably not in accord with the applicable decisions of this Court.

In *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 90 L. Ed. 95, 66 Sup. Ct. 154, this Court held that a foreign corporation must have certain minimum contacts with a state to permit the courts of that state to exercise personal jurisdiction over it. In *McGee v. International Life Insurance Company* (1957) 355 U.S. 220, 2 L. Ed. 2d 223, 78 Sup. Ct. 199, this Court did uphold jurisdiction of a California court over a foreign life insurance company in a case in which the contract had been made in California and the premium payments were mailed from California by the insured, a California resident. The Court pointed out that the beneficiaries under the policy could bring suit against only one potential defendant, namely the foreign insurance corporation, whose home office was in Texas. Barely six months later, in *Hanson v. Denckla* (1958) 357 U.S. 235, 2 L. Ed. 2d 1283, 78 Sup. Ct. 1228, this Court refused to sanction the exercise of personal jurisdiction by the courts of Florida over a foreign corporation and said:

> "* * * but it is a mistake to assume that this trend [toward exercise of jurisdiction over foreign corporations] heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [citation omitted.] Those restrictions are more than a guaranty of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State are a pre-requisite to its exercise of power over him. See *International Shoe Co. v. Washington* [citation omitted]." 357 U.S. at 251.

The affidavits of record, as summarized on pages 7 and 8 of this Petition, clearly establish that Petitioner did not have the minimal contacts with California requisite for that State's courts to assert *in personam* jurisdiction over Petitioner. Like the Delaware trust company in *Hanson v. Denckla, supra,* Petitioner had no office in California and transacted no business there. No property belonging to Petitioner ever entered California and the record discloses no solicitation of business by Petitioner in California, either in person or by mail. "The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee v. International Life Ins. Co.* * * *". *Hanson v. Denckla, supra,* 357 U.S. at 251. The sole connection between Petitioner and the plaintiffs' decedent in the case at bar is that Petitioner allegedly manufactured an article which may have contributed to causing decedent's death. But this article had ceased to belong to Petitioner, and had become the property of B & B Supply Company, before the article ever left the city of Newark, Ohio, as had all other articles manufactured by Petitioner and sold to B & B or other persons located in California since all shipments were "F.O.B., Newark, Ohio."

Plaintiffs in the case at bar differ from the plaintiff in

*McGee v. International Life Ins. Co., supra,* in that in *McGee* there was but one potential defendant for the California plaintiff to sue, namely, a Texas life insurance company. In this case, however, there are a number of substantial defendants against whom plaintiffs can properly proceed in the California courts.

B & B was free to sell Petitioners' products to whomever it wished. Insofar as appears, the same is true with respect to all purchases from Petitioner of its products. It is manifestly unjust to subject a small enterprise like Petitioner to suit in every State in the Union in which its products may be resold by those who, in Ohio, purchase them from Petitioner.

> "* * * The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. International Shoe Co. v. Washington, * * *". *Hanson v. Denckla, supra,* 357 U.S. at 253.

The burden of establishing "some act by which [Petitioner] purposefully avails itself of the privilege of conducting activities within" California in order to subject Petitioner to the jurisdiction of the California courts is on those parties who assert that those courts have such jurisdiction. *Proctor and Schwartz v. Superior Court,* 99 C.A.2d 375, 379, 221 P.2d 972 (1950); *McNutt v. General Motors Accept. Corp.,* 298 U.S. 178, 80 L. Ed. 1135, 56 Sup. Ct. 780 (1936). In this case those parties, the plaintiffs and B & B, have not borne this burden, as the record clearly shows.

Thus the California courts have decided a Federal question of substance probably not in accord with the applicable decisions of this Court.

## II

Almost ten years have passed since the decision of this Court in *Hanson v. Denckla, supra*. It is submitted that it is now necessary for this Court to speak again in this area since over the years there has developed a wide disparity in rulings and interpretations by State and Federal courts of the limitations imposed by the 14th Amendment and the pertinent decisions of the Supreme Court of the United States, and for the further reason that these courts constantly look to this Court for guidance.

The question of the jurisdiction of a court over the person of a foreign corporation poses constantly recurring problems for State and Federal courts. The due process clause of the 14th Amendment is repeatedly brought into consideration, even though the first inquiry is usually concerned with the provisions of a State "long-arm" statute. Indeed, many such statutes including the California statute, have been held to empower the courts of the State to reach as far as the 14th Amendment will permit.

In October, 1967, only five months ago, the United States Courts of Appeals for the Ninth Circuit, considering the Oregon "long-arm" statute, observed:

> "* * * [T]he courts of various states, including Illinois, have construed their long arm statutes as going as far as the due process clause of the Fourteenth Amendment will let them go. In effect, what *these courts* have done is to *abdicate their duty to construe the statutes of their own states and* to *turn it over to the Supreme Court of the United States*, which is the ultimate interpreter of the Constitution of the United States. We have no present reason to doubt that the Oregon courts will do likewise. We think that it is probably true that the legislators of Oregon wanted to enlarge the jurisdiction of its courts over non-residents to the fullest extent that the Constitution permits. The attempt thus to expand jurisdiction is no new phenomenon; it has just been more successful in recent years.

> "This is a federal question, and as to it we are controlled by decisions of the Supreme Court of the United States and by our own decisions." *Taylor v. Portland Paramount Corporation* (9th Cir. 1967) 383 F.2d 634, 640. (Emphasis added.)

The Supreme Court of California, speaking of the California long-arm statute, has said:

> "The statute authorizes service of process on foreign corporations that are 'doing business in this State.' That term is a descriptive one that the courts have equated with such minimum contacts with the state 'that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."' International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95. Whatever limitation it imposes is equivalent to that of the due process clause. '"[D]oing business" within the meaning of section 411 of the Code of Civil Procedure is synonymous with the power of the state to subject foreign corporations to local process.'" *Henry R. Jahn & Son, Inc. v. Superior Court*, 49 C.2d 855, 323 P.2d 437, 439 (1958).

The need and desire for further guidance from this Court was clearly pointed up by the following language of the Tenth Circuit Court of Appeals in 1962.

> "The impact of the due process clause on the in personam jurisdiction of state courts has presented a continuing problem to the courts which has resulted in a multitude of decisions, *none of which*, as yet, *lay down definitive standards* for universal application. * * *
>
> "* * * While these last two decisions [Vanderbilt v. Vanderbilt, 354 U.S. 416, and Hanson v. Denckla, 357 U.S. 235] disclose that the concept of territorial limitations on state power has not been discarded, it is noteworthy that each of them *involved private rather than corporate activities* and that neither questioned the validity of the 'minimum contact-fair treatment' rule of the International Shoe decision.

> "We believe that *International Shoe* is controlling and that the instant controversy must be resolved by the application of the *principles* there announced. Those principles are stated as conclusions and *do not provide the criteria required to sustain themselves.* We followed International Shoe in Steinway v. Majestic Amusement Co., 10 Cir., 179 F.2d 681, . . . and there said that, leaving every case to its own facts, to constitute doing business a nonresident corporation's activities must be substantial, continuous, and regular as distinguished from casual, single, or isolated. We shall apply these standards here." [Emphasis added.] *Curtis Publishing Co. v. Cassel*, 302 F.2d 132, 135, 136 (10th Cir. 1962).

Some courts, supposedly applying the principles of the *International Shoe* decision, have gone so far as to hold that the minimum contacts for the requisite jurisdiction may result from a single transaction, as in *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664, 25 A.L.R.2d 1193 (1951); *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); *Painter v. Home Finance Company*, 245 N.C. 576, 96 S.E.2d 731 (1957); *Hutchinson v. Boyd and Sons Press Sales, Inc.*, 188 F. Supp. 876 (D. Minn. 1960). Other courts, applying the same principles to similar fact situations, have held that a single transaction did not provide the requisite minimum contacts. *Hodge v. Sands Manufacturing Company*, 150 S.E.2d 793 (W. Va. 1966); *Erlanger Mills v. Cohoes Fibre Mills*, 239 F.2d 502 (4th Cir. 1956).

Particularly startling are the opposite results arrived at in *Gray v. American Radiator and Standard Sanitary Corporation*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), and *Hearne v. Dow-Badische Chemical Company*, 224 F. Supp. 90 (D. Tex. 1963), on the one hand, wherein the courts after reviewing the latest decisions of this Court upheld service on foreign manufacturers of articles which allegedly caused injuries in the forum State, and in *Hodge v. Sands Manufacturing Company, supra*, on the other hand, in which the facts were almost identical both as to the relation of the defendant to

the injury and as to the contacts of the defendant with the forum State, the same recent decisions of this Court were carefully analyzed, and yet the attempted exercise of *in personam* jurisdiction was held to contravene the due process clause of the 14th Amendment.

The lack of consistency in the lower courts is underscored by the difference between the ruling of Division 4 of the California Court of Appeals, Second District, on November 27, 1967, in *Gill v. Surgitool Incorporated*, 64 Cal. Rptr. 207 (1967), and the conclusion reached by Division 2 of the same court in the case at Bar in February, 1968. The affidavits filed in *Gill* established that an artificial heart valve was manufactured by defendant Pennsylvania corporation in Pennsylvania where defendant received a purchase order and in response to the purchase order shipped the valve which was thereafter used to replace decedent's own aortic valve in an operation performed in a Los Angeles hospital. The complaint alleged that decedent later died because the valve was defective.

From the affidavit of one Phil Nelson, an employee in the supply department of Los Angeles County General Hospital, it appeared that he had

> "'a responsibility for ordering medical and hospital supplies and equipment.' This has been done 'both by correspondence and by telephone' with the defendant from whom 'we have received from time to time various brochures and publications consisting of catalogs, price lists, maintenance suggestion letters and offerings. * * * I have personally talked with the company at least one time that I can recall with reference to the purchase of a heart valve; we have also at the request of one or more of our doctors who use these valves in surgery, corresponded with Surgitool, Inc. and negotiated with the company for the modification of valves and return to us of the modified valves from Pittsburgh.'
>
> "It will be noted that nowhere does it appear that the Pennsylvania corporation took the initiative in

doing any business in California and it had no agent busy here. * * *" 64 Cal. Rptr. 210, 211.

Counsel are unable to perceive any meaningful difference between the extent of Surgitool's contacts with California and those of Wyeth-Scott in the case at bar.

From the foregoing brief analysis it is apparent that there is crying need for further guidance from this Court in order to bring uniformity to the decisions of the State and lower Federal courts which are repeatedly called upon to interpret and apply the due process clause of the 14th Amendment to the question of *in personam* jurisdiction over foreign corporations. Many courts have expressed this need and a desire for such guidance. A decade has passed since this Court last spoke in this area in *Hanson v. Denckla, supra.*

Wherefore, Petitioner prays that this Honorable Court grant this petition and issue a writ of certiorari to the Court of Appeal of the State of California, Second Appellate District, to review its final order dated the 20th day of February, 1968, which denied Petitioner's petition for writ of mandate to compel the trial court to quash service of summons.

Respectfully submitted,

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# APPENDIX

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**OPPOSITION OF PLAINTIFFS TO MOTION OF DEFENDANT WYETH-SCOTT COMPANY TO QUASH SERVICE OF PROCESS, FILED IN THE SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES**

*EXTRACT*

* * *

It is respectfully submitted, however, that the affidavits filed in support of and in opposition to this motion amply demonstrate that Wyeth-Scott Company is amenable to service of process in this law suit, and that the motion to quash must be denied.

The fundamental principles which govern the determination of this motion are well known. As the Supreme Court of the United States has observed, the personal jurisdiction of the state courts is limited only by the requirements of due process; and due process requires only that in order to subject the defendant to a judgment *in personam,* the defendant must have certain minimum contacts with the forum state, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

*International Shoe Co. vs. State of Washington,* 326 U.S. 310, 66 Sup. Ct. 1054, 90 L. Ed. 95;

*McGee vs. International Life Insurance Co.,* 355 U.S. 220, 78 Sup. Ct. 199, 2 L. Ed. 2d 223.

The decisions of the Supreme Court of California on this subject, as well as the decisions of the intermediate appellate courts of this state, make it perfectly clear that California will exercise its jurisdiction over foreign corporations to the full extent permitted by the federal constitution. [Page 2]

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**OPPOSITION OF CO-DEFENDANT AND CROSS-COMPLAINANT B & B SUPPLY COMPANY TO MOTION OF DEFENDANT WYETH-SCOTT COMPANY TO QUASH SERVICE OF PROCESS, FILED IN THE SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES**

EXTRACT

* * *

The trial court granted the motion to quash, but this was *reversed on appeal;* the opinion saying at pages 227, 228:

> "The present state of the law, and the reasons therefor are expressed in the following quotations from *McGee v. International Life Insurance Co.* (1957), 355 U.S. 220, 222, 224 (78 S.Ct. 199, 2 L.Ed.2d 223): 'Since *Pennoyer v. Neff,* 95 U.S. 714 (24 L.Ed. 565), this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned "consent", "doing business", and "presence" as the standard for measuring the extent of state judicial power over such corporations. . . More recently in *International Shoe Co. v. Washington,* 326 U.S. 310 (66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057), the Court decided that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'".
> [Pages 10 and 11]

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER WYETH-SCOTT COMPANY'S PETITION FOR WRIT OF MANDATE, FILED IN THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT.**

*EXTRACT*

* * *

III

THE CALIFORNIA COURTS HAVE EQUATED THE "DOING BUSINESS" REQUIREMENT FOR SERVICE OF PROCESS ON A FOREIGN CORPORATION WITH THE "MINIMUM CONTACT" REQUIREMENT OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. [Page 10]

* * *

IV

PETITIONER'S "CONTACTS" WITHIN THE STATE OF CALIFORNIA FOR THE PURPOSE OF MAKING IT AMENABLE TO THE JURISDICTION OF THE CALIFORNIA COURTS, ARE NOT SUFFICIENT TO SATISFY THE REQUIREMENTS OF DUE PROCESS.

As already stated, the California courts have adopted the doctrine of minimum contacts to test whether a corporation is doing business for the purpose of the service of process. This doctrine was first stated by the United States Supreme Court in the case of *International Shoe Company v. Washington*, 326 U.S. 310, 316 (1945): [Page 13]

* * *

In the *International Shoe* case, the corporate defendant had eleven to thirteen very active salesmen residing in the state of Washington. The opinion went into some detail of the activities of these salesmen and concluded that by virtue of those activities the corporate defendant was amenable to process. The *International Shoe* case is easily distinguished from petitioner's case in that petitioner has no salesmen and conducts no business activities in the state of California.

After the *International Shoe* case, the United States Supreme Court handed down the case of *McGee v. International Life Insurance Company*, 355 U.S. 220 (1957). The

court in that case, applying the minimum contact doctrine, held that it was sufficient for the purpose of due process that a suit was based on a contract which had substantial connections with the state of California. As slim as the "contacts" in the *McGee* case might appear to be, they are still in fact greater than the "contacts" of petitioner with the state of California.* * * [Page 16]

* * *

* * * In *Hanson v. Denckla,* supra, the court stated at 250-51:

> "In *McGee* the Court noted the trend of expanding personal jurisdiction over non-residents. As technilogical progress has increased the flow of commerce between the States, the need for jurisdiction over non-residents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to those changes, the requirements for personal jurisdiction over non-residents has evolved from the rigid rule of *Pennoyer v. Neff* . . . to the flexible standard of *International Shoe Co. v. Washington*. . . . But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. See *Vanderbilt v. Vanderbilt*. . . . Those restrictions are more than a guarantee of immunity from inconvenience or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he had had the 'minimal contacts' with that state that are a prerequisite to its exercise of power over him." [Pages 18 & 19]

* * *

If this court applies the rule as stated in the *Denckla* case for determining whether the requirements of due process are satisfied, it can only reach one conclusion and that it is that petitioner was not amenable to the jurisdiction of California courts. * * * [Page 20]

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER WYETH-SCOTT COMPANY'S PETITION FOR WRIT OF MANDATE, FILED IN THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT**

*EXTRACT*

* * *

1. IT IS THE POLICY OF CALIFORNIA TO EXTEND ITS JURISDICTION OVER FOREIGN CORPORATIONS TO THE FULL EXTENT PERMITTED BY THE FEDERAL CONSTITUTION.

There can be no question that it is the policy of California to provide relief to California residents in the courts of this state for any injuries sustained by them, to the full extent permitted by the due process clause of the Federal Constitution. * * * [Page M-1]

* * *

The proper inquiry, therefore, concerns the minimum requirements of the due process clause of the Federal Constitution, as that clause has been interpreted by the Supreme Court of the United States, and by the Supreme Court of this state. As Petitioner acknowledges, these requirements were set forth plainly enough in *International Shoe Co. v. State of Washington,* 326 U.S. 310, and *McGee vs. International Life Insurance Co.,* 355 U.S. 220. * * *" [Page M-2]

**REPLY OF CO-DEFENDANT AND CROSS-COMPLAINANT B & B SUPPLY COMPANY TO PETITIONER WYETH-SCOTT COMPANY'S PETITION FOR WRIT OF MANDATE, FILED IN THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT**

*EXTRACT*

* * *

*Hanson v. Denckla,* 357 U.S. 235. This case is not even remotely in point; and merely relates to the question of whether a state has jurisdiction *in rem* over certain trust assets." [Pages 13 & 14]

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**PETITIONER WYETH-SCOTT COMPANY'S PETITION FOR HEARING, FILED IN THE SUPREME COURT OF CALIFORNIA**

*EXTRACT*

* * *

The United States Supreme Court has recently formulated a doctrine of "minimum contacts" as a test of whether a corporation is "doing business" for the purpose of service of process. *International Shoe Company v. Washington,* 326 U.S. 310. * * * [Page 7]

* * *

The next decision of the United States Supreme Court concerning the minimum Contact Doctrine was *McGee v. International Life Insurance Company,* 335 U.S. 220. * * * [Page 8]

* * *

The United States Supreme Court re-stated the Minimum Contact Doctrine in the case of *Hanson v. Denckla,* 357 U.S. 235. That case is the last pronouncement of the Minimum Contact Doctrine by the United States Supreme Court and is the law of the land. [Page 8]

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPT. SOUTH H

Date: JAN 23 1968 Hon. MAX Z. WISOT, Judge; M VANDE WEERD, Deputy Sheriff; C E COLBY, Deputy Clerk; R WAKEFIELD, Reporter (Parties and counsel checked if present)

9:30 AM

5. 80 C 15120

DOROTHY MAE BRIGGERS, et al

vs

THUMS LONG BEACH COMPANY, a corporation, et al

Counsel for Plaintiff: Bodle, Vogel, Julber and Reinhardt By H. Chodas

Counsel for Defendant: Brill, Hunt, DeBuys & Burby By Abe Mutchnik; Parker, Stanbury, McGee, Peckham & Garrett By Richard Aishz

RT

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NATURE OF PROCEEDINGS:

Defendant and Cross-Defendant, WYETH-SCOTT COMPANY, Motion to Quash Service of Summons, continued from January 9, 1968, comes on for hearing.

Counsel argue.

Motion is denied.

Notice is waived.

C E Colby

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Minutes of February 20, 1968

DIVISION TWO

Civil No. 32732 Wyeth-Scott v. Superior Court, Los Angeles County

THE COURT:

Petition for writ of mandate denied.

Cause Due
March 21, 1968.

## ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, Civil No. 32732

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

Court

WEIER-SCOTT COMPANY, ETC.,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY.

FILED

MAR 1 1968

WILLIAM I. SULLIVAN, Clerk

By _____ D. P. Deputy

Petition for hearing DENIED.

~~of the opinion that the petition should be granted~~

~~MOSK~~,

Acting ~~Chief Justice~~

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPT. SOUTH E

Date MARCH 19 1968 Hon. MAX E. WISOT, Judge; M VANDE WEERD, Deputy Sheriff; G E COLBY, Deputy Clerk; E WAKEFIELD, Reporter
(Parties and counsel checked if present)

9:30 AM

24. SO C 15120
DOROTHY MAE DRIGGERS, et al

vs

WYETH-SCOTT COMPANY, et al

Counsel for Plaintiff: Bodle, Fogel, Julber and Reinhardt By Daniel Fogal

Counsel for Defendant: Brill, Hunt, DeBuys & Burby

Parker, Stanbury, McGee, Peckham & Garrett By J. H. Peckham B1

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NATURE OF PROCEEDINGS:

Defendant and Cross-defendant, WYETH-SCOTT COMPANY, motion for an order extending time within which to enter a general appearance and plead to the complaint and cross-complaint, comes on for hearing.

Counsel argue.

Motion is denied.

DATE: DEPT. SOUTH E